

Remarks:

Applicant respectfully requests reconsideration of the final Office action dated September 20, 2005 and Advisory Action dated December 2, 2005 in view of the foregoing amendments and the following remarks.

Prior to entry of the present amendment, claims 1-8, 10-14, 16-28 and 30-56 remained pending in the application. Claims 5-7, 11, 16, 19-22 and 39 and 49-51 have been withdrawn from consideration pursuant to an earlier restriction/election requirement.

Claim Objections

In the September 20, 2005 Office action, claims 1-4, 8, 10, 12-14, 17-18, 23-28, 30-31, 33 and 52 are objected to because of perceived informalities in the phrase "at least one transducer in the transducer array is configured to attach to a sample material." The Examiner indicates that this language gives the impression that "the sample is smaller than the piezoelectric crystal (or transducer)," which the Examiner contends is inconsistent with the specification. In applicant's November 23, 2005 Amendment (not entered per the December 2, 2005 Advisory Action), Applicant disagreed, asserting that the cited language gives no connotation of size, and that neither the specification nor claims should be read as restrictively as the Examiner proposes. Applicant maintains this position.

Nevertheless, in the interest of furthering prosecution on the merits, claims 13, 17, 27, 31 and 52 have been amended in accordance with the Examiner's suggestion to recite a "transducer array is configured to have a sample material attached thereto." Claims 1-4, 8, 10, 12, 14, 17-18, 23-26, 28, 30 and 33 have been cancelled without prejudice, thus rendering the rejection of these claims moot.

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Applicant thus understands that the objection to claims 13, 17, 27, 31 and 52 is overcome.

Rejections Under 35 U.S.C. §102

Claim 56 stands rejected under 35 U.S.C. §102 as being anticipated by Harrison, Jr. et al. (US 5,119,342). Although applicant respectfully traverses the rejection, in the interest of furthering prosecution of the remaining claims, claim 56 is cancelled without prejudice. Claim 56 also was cancelled in applicant's November 23, 2005 Amendment (not entered per the December 2, 2005 Advisory Action). The rejection under 35 U.S.C. §102 thus is rendered moot.

Rejections Under 35 U.S.C. §103

Claims 1, 3, 8, 10, 12, 14, 17, 23, 25, 28, 30, 33-36, 40, 42, 45, 47 and 48 stand rejected under 35 U.S.C. §103(a) based on Iinima et al. (US 4,253,338) in view of Talish et al. Claim 24 stands rejected under 35 U.S.C. §103(a) based on Iinima et al. in view of Talish et al., and further in view of Harrison, Jr. et al. Claims 4, 18, 26, 41 and 43-44 stand rejected under 35 U.S.C. §103(a) based on Iinima et al. in view of Talish et al., and further in view of Robinson et al. (US 6,419,633 B1). Applicant respectfully traverses the rejections, noting his earlier submission of a Declaration Under §1.131 claiming prior invention to Talish et al. (not entered per the December 2, 2005 Advisory Action).

The Examiner indicates in the cited Advisory Action that the Declaration Under §1.131 will not be entered because "applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented" (citing 37 C.F.R. §1.116(e)). Applicant notes, however, that the subject reference was first identified in the preceding final Office action (dated

September 20, 2005), and thus could not have been addressed prior to responding to the final Office action.

Applicant asserts that the Examiner has improperly applied 37 C.F.R. §1.116(e). As noted in MPEP 714.13, affidavits or declarations filed under 37 C.F.R. §1.131 are not addressed under 37 C.F.R. §1.116. Rather, pursuant to MPEP 715.09, affidavits or declarations under 37 C.F.R. §1.131 are considered whenever they are timely submitted (including when submitted "with a first reply after final rejection for the purpose of overcoming a new ground of rejection or requirement made in the final rejection"). There is no requirement of any showing of why the affidavit or declaration is necessary and was not earlier presented.

Applicants also assert that the indication that the rejoicing of withdrawn claims requires further search and that such claims must be "checked for 112 issues" is not adequate basis for refusal to enter amendments after final rejection. Pursuant to MPEP 809, "[a]ny claim(s) directed to the nonelected invention(s), previously withdrawn from consideration, which depends from or includes all of the limitations of the allowable linking claim must be rejoined and will be fully examined for patentability."

Nevertheless, in the interest of furthering prosecution of the present application on the merits, applicants have cancelled claims 1-3, 12, 14, 17, 28, 30, 33-35, 40, 42, 45, 46, 48 and 56 without prejudice. The rejections under 35 U.S.C. §103(a) thus are rendered moot.

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Claims Indicated Allowable

Pursuant to the September 20, 2005 Office action, claims 53-55 have been allowed, and claims 13, 27, 31, 37-38 and 52 have been indicated allowable if rewritten in independent form to include the base claim and any intervening claims. By this amendment, applicant has amended claims 13, 27, 31, 37, 38 and 52 to place such claim in independent form, thus placing such claims in allowable form. All issues raised in the September 20, 2005 Office action, and subsequent Advisory Action thus are addressed.

Newly Identified Art

Applicant notes that the Examiner has identified Ravel et al. (US 5,488,866) as potentially relevant art, and has suggested that applicant consider such art.

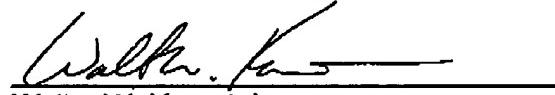
Upon review of Ravel et al. applicant asserts that Ravel et al. does not disclose or suggest the transducer based sensor system(s) recited in applicant's claims. In particular, applicant assert that Ravel et al. fails to disclose or suggest, among other things, a transducer array configured to isolate any unselected transducers by disabling the transmission paths as recited in applicant's claims.

Conclusion

Applicant believes that this application is now in condition for allowance, in view of the above amendments and remarks. Accordingly, applicant respectfully requests that the Examiner issue a Notice of Allowability covering the pending claims. If the Examiner has any questions, or if a telephone interview would in any way advance prosecution of the application, please contact the undersigned attorney of record.

Respectfully submitted,

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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence is being facsimile transmitted to Examiner R. Miller, Group Art Unit 2856, Assistant Commissioner for Patents, at facsimile number (571) 273-8300 on December 20, 2005.



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